

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**RE: PETITION OF THE CAPE LIGHT COMPACT  
SEEKING CERTIFICATION OF AMENDED  
ENERGY EFFICIENCY PLAN**

**DTE 03-39**

**MOTION FOR RECONSIDERATION OF THE CAPE LIGHT COMPACT**

**I. INTRODUCTION**

Pursuant to 220 C.M.R. 1.04(5) and 1.11(10), the Cape Light Compact (the “Compact”) hereby moves for reconsideration of one specific finding of the Department of Telecommunications and Energy (the “Department”) in its October 23, 2003 Order in DTE 03-39 (the “Order”).

The Compact respectfully requests reconsideration of the portion of the Order denying the certification of the Residential New Construction Demonstration Project (“RNC Demo”) presented in the Petition of the Cape Light Compact Seeking Certification of Amended Energy Efficiency Plan. See Petition of Towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Eastham, Edgartown, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, Wellfleet, West Tisbury, and Yarmouth and Counties of Barnstable and Dukes, acting as the Cape Light Compact, for Certification of Energy Efficiency Plan Update, DTE 03-39 (hereafter the “Petition”).

There are two overarching grounds for this Motion. First, the Compact, as a non-profit municipal aggregator, is governed by different standards with respect to the development and implementation of energy efficiency programs than a Local Distribution

Company. Second, even assuming *arguendo* that the Cape Light Compact Energy Efficiency Plan, Phase II, 2003-2007 (the “Amended Plan”) is subject to the *same* regulatory construct as a Local Distribution Company energy efficiency plan, the RNC Demo is an appropriate investment for the Compact to make using Public “System Benefit Charges” revenues collected in customer rates and is in the public interest even at a benefit-cost ratio (“BCR”) of less than one.

The Compact is committed to an open process with a high degree of public participation in the review of its energy efficiency programs. The Compact is directed by a Governing Board composed of representatives from every town and the two counties within the Compact’s territory; as the Department knows, most of these representatives are elected officials and *all* are chosen by elected officials and answerable to the very same consumers served by the Amended Plan. Therefore, in numerous filings with the Department, the Compact has described in detail the extensive public outreach and comment opportunities it has provided in the design of its various energy programs.

While the Compact acknowledges the importance of working with the Department to review and certify its energy efficiency efforts, the Compact also asserts that, as a matter of law, it has the ability to implement energy efficiency programs which may not comport precisely with the Department’s energy conservation standards. In addition, the Compact believes that the Department’s rejection of the RNC Demo is inconsistent with the Department’s long history of recognizing the need for important energy efficiency research and development pilots of which the RNC Demo is a worthy example. Further, the Department may not have appropriately credited many of the

potential short- and long-term benefits from the RNC Demo. The basis for these claims is set forth in detail below.

## **II. BACKGROUND FOR THE MOTION**

Pursuant to G.L. c. 164, § 134(b) (“Section 134(b)”), a “municipality or group of municipalities establishing a load aggregation program” may “adopt an energy plan” describing the manner in which the “municipality or group of municipalities may implement demand side management programs.” Municipalities must submit the energy plan to the Department, “to certify that it is consistent with ...state energy conservation goals.” Section 134(b).

The Compact petitioned the Department for approval of its original Energy Efficiency Plan (the “Original Plan”) on December 4, 2000. In its Final Order of April 6, 2001, the Department approved the Compact’s Plan. Final Order, April 6, 2001, DTE 00-47C (“Final Order”). The Department stated that the Original Plan satisfied state goals for energy efficiency by, “ (1) establishing low-income program budget consistent with the budget levels mandated by G.L. c. 25, § 19, and (2) meeting the cost-effectiveness criteria established by the Department in D.T.E. 98-100.” Final Order.

On March 28, 2003, under Section 134(b), the Compact petitioned the Department for approval of the Amended Plan. In the Order, the Department certified that the Compact’s Amended Plan, with the exception of the RNC Demo, is consistent with the state energy efficiency goals, and as a result, the Department denied the RNC Demo. October 23, 2003 Order, DTE 03-39, at 17 (“Amended Plan Order”).

### III. THE COMPACT HAS BROAD LEGAL AUTHORITY TO IMPLEMENT THE RNC DEMO

As noted above, the Compact submitted its Original Plan and its Amended Plan to the Department for approval under the provisions of Section 134(b). However, another provision later in Section 134(b) states “this subsection shall not prohibit a municipality or group of municipalities from considering, adopting, enforcing, or in any other way administering an energy plan which does not comply with any such state-wide conservation goals so long as it does not violate the laws of the commonwealth.” Section 134(b).

As a group of municipalities acting together to aggregate the electrical load delivered to consumers within its jurisdiction, the Compact asserts that it may implement the RNC Demo as long as it does not violate other state statutes. The Compact’s review of pertinent statutes did not turn up any specific provisions which the RNC Demo would directly or indirectly abridge. Indeed, the Order does not provide any specific statutory citation for rejecting this particular program other than the broad direction of G.L. c. 25, § 19 that programs be “delivered in a cost effective manner utilizing competitive procurement processes to the fullest extent practicable.” This language can hardly be read as mandating disapproval of *individual* activities which don’t have a BCR of 1, by themselves, especially where the Compact need not comply with ... “state-wide conservation goals.” Section 134(b).

It is a cardinal maxim of statutory construction that no provision of a statute should be treated as mere surplusage and that an effort should be made to give every provision meaning. *Bolster v. Commerce of Corporations and Taxation*, 319 Mass. 81, 84-85 (1946). The Department is therefore obligated to treat this specific provision (in

the nature of a “savings clause”) as vesting an extra measure of discretion in municipal aggregators (which have no shareholders and, as is the case with the Compact, are governed by public officials or their designees). Such an interpretation is consistent with the rule that “an exception from the coverage of a statute is ordinarily to be construed narrowly so as to prevent the purposes of the statute from being rendered ineffective.” *Martin v. Rent Control Board of Cambridge*, 19 Mass. App. Ct. 745, 747 (1985). Here, the Compact’s Governing Board has endorsed the RNC Demo (and the remainder of the Amended Plan) after careful consideration of the need for each program, including the RNC Demo. In the case of the RNC Demo, the Compact recognized the higher than state average level of residential new construction and the opportunity to develop innovative new programs with significant potential long-term benefits. See *supra* at 7-8. If this is not the type of innovation and program design by the General Court authorized in its enactment of the 134(b) savings clause, then nothing is.

#### **IV. AN APPROPRIATE ANALYSIS OF THE ENERGY EFFICIENCY AND COST EFFECTIVENESS BENEFITS SUPPORTS THE RNC DEMO**

##### **A. Introduction**

State energy conservation goals have been developed by the Massachusetts Division of Energy Resources (“DOER”) pursuant to G.L. c. 25A, § 11G, as part of the “Guidelines Supporting the Massachusetts Division of Energy Resources Energy Efficiency Oversight and Coordination Regulation 225 C.M.R. § 11.00.” (“DOER Guidelines”). See Amended Plan Order at 3. The DOER Guidelines establish an overall statewide energy efficiency goal that energy efficiency activities should “protect the environment and strengthen the economy by increasing the efficiency of energy use.” DOER Guidelines at 2. The DOER Guidelines also establish the threshold goals for

providing funding for energy efficiency services for low-income ratepayers (at the levels specified in G.L. c. 25, § 19), and reducing the use of electricity cost-effectively, based on guidelines established by the Department. *Id.* at 2, 9.

**B. Energy Efficiency, Cost Effectiveness and the RNC Demo**

The programs in the Compact's Amended Plan were developed to enhance or improve upon the services provided by the Compact in its Original Plan. The purpose of the RNC Demo is to address the efficiency opportunities available from new home construction that are not being met by the Compact's existing Residential New Construction ("RNC") program, by offering greater financial incentives per housing unit and requiring participants to achieve higher standards of efficiency and design. See RNC Demo description in Section 3.3 of the Cape Light Compact Energy Efficiency Plan, Phase II, 2003-2007, DTE 03-39.

In its analysis of the RNC Demo, the Department specifically states that the program fails to meet the Department's cost-effectiveness test and thus finds that the Program fails to meet the threshold goal of reducing the use of electricity cost-effectively. (Order at 10). The Department further states "the goal of cost-effectively reducing energy use is a mandatory requirement that must be met on a pass-fail basis, in order to obtain ratepayer funding to implement energy efficiency programs." *Id.*

However, the Department's findings are based on an overly narrow construct, as set forth in Section II of this Motion, and also do not consider the nature of the RNC Demo as a pilot. See Section III(c), *supra* at 7-9. Nor do they consider that the RNC Demo is budgeted at only about \$70,000 per year (or about 1.1% of the Compact's total

program budget), and is designed to bring innovation to a critical and heretofore untapped market segment.

For example, the RNC Demo serves a lost opportunity market (small home developers), which is one of the seven priority-setting goals of the DOER. DOER Guidelines at 2. Further, the RNC Demo specifically targets customer segments such as single-family homes and small developments that are not participating at an appreciable or satisfactory rate in the current RNC program. This aspect of the RNC Demo is consistent with the DOER goal of ensuring that energy efficiency funds are distributed equitably among customer classes, and is in keeping with the strong philosophy of the Compact's Governing Board which has directed Compact program staff to strictly pursue such equity distributions of program resources among participating communities and customer markets whenever possible, a principle that the Compact has consistently represented in its reports to regulators ever since the Compact filed its Original Plan.

In fact, in a letter of support for the Compact's Amended Plan, the DOER stated "[t]he Division of Energy Resources finds that the Compact's Energy Efficiency Plan is consistent with the energy efficiency goals of the Commonwealth." Report of the Division of Energy Resources regarding the Cape Light Compact 2003-2007 Energy Efficiency Plan, April 11, 2003.

**C. The RNC Demo Project is a Pilot Program**

As noted earlier, it is vital that the Department recognize that the RNC Demo project is a pilot project, and not a fully-developed energy efficiency program. In its Petition, the Compact clearly states that the project's purpose is to conduct research through its activities and follow-up analysis, and then to evaluate the results in order to

inform future new construction program design. Amended Plan at 26. The RNC Demo project is designed to address specific concerns and limitations of the RNC program.

Amended Plan at 22 and 23. The RNC program addresses one of the most important lost opportunities in the electricity industry: the construction of new homes that will be consuming energy for fifty-years or more into the future. The RNC program is especially important on Cape Cod and Martha's Vineyard, where new homes are being constructed at rates higher than elsewhere in Massachusetts, and are a major factor contributing to the growth of electricity demand in the region. It therefore is essential that the Compact have the ability to investigate opportunities to maximize the efficiency gains from this critical market sector.

Demonstration or pilot projects are simply an initial step from the "designing board" into the field, allowing for the staged implementation of innovative ideas for energy efficiency programs. They should not be subjected to a strict cost-effectiveness threshold because they are intended to demonstrate and provide information on efficiency measure costs and savings; customer and trade ally market acceptance; viability of new designs and efficiency measures; and other important program development matters. To restrict all such well-conceived and promising research from taking place is to ensure that the programs are static, miss opportunities, and don't respond to changing economic and market circumstances. Even without the greater degree of flexibility granted by the savings clause of Section 134(b) cited *infra* at 4, the Department still has the inherent authority to approve pilots which do not meet the same cost-effectiveness standards.



It is the Compact's understanding that Massachusetts utilities routinely include pilot programs in their energy efficiency plans. For example, both NSTAR and NGRID include several pilot programs in their 2003 Energy Efficiency Plans. See 2003 Energy Efficiency Plan, Massachusetts Electric and Nantucket Electric, January 2003; 2003 Energy Efficiency Plan, NSTAR Electric, April 2003. In fact, while urging program administrators to improve program BCR results, the Department has allowed non-cost effective, fully implemented programs to continue, particularly when they involve lost opportunity markets like this one that have proven to be difficult to serve. Massachusetts efficiency program administrators simply would not be able to implement the excellent, state-of-the-art programs that they offer today if they had not been allowed to employ pilot programs in the past.

**D. Cost Effectiveness and the RNC Demo: A Recalculation of the Benefit-Cost Ratio Yields Substantial Improvement**

In light of the Department's order, the Compact has taken a closer look at the benefits and costs of the RNC Demo. Based on this analysis, as well as information obtained from its experience with the program participants in 2003, the Compact has performed an updated benefit-cost analysis, and estimated a new BCR.

As noted in Table 3.3 of the Compact's Amended Plan, there are many energy efficiency measures likely to be implemented as a result of this program that were not accounted for in the cost-benefit analysis. These measures are presented again in Table 1. See Exhibit 1 attached hereto.

It is difficult to estimate the extent to which these measures will provide energy savings, because RNC Demo participants have the choice of which of these measures to adopt. In other words, some participants may adopt one subset of these measures in order

to achieve the requirements of Tiers 1, 2 or 3, and other participants may choose a different subset. However, the Compact requires that some of these measures be implemented by each participant in order to meet the requirements of the program, and therefore it is confident that *some* energy savings are not being accounted for in the benefit-cost analysis.

Based on the experience to date with the RNC Demo, the Compact has found one benefit in Table 1 (see Exhibit 1) that can be added with confidence to the benefit-cost analysis: the reduced use of central air conditioning. The majority of new homes built on the Cape and Vineyard that participate in the standard RNC have central air conditioning installed. All of the non-low-income homes that have participated in the Compact's RNC Demo so far have been able to avoid the need for central air conditioning, as a result of all the efficiency measures applied to the new homes.

Accordingly, the updated benefit-cost analysis assumes that participating homes will achieve electricity savings as a result of not having to install central air conditioning. These savings are not applied to the low-income homes, because these homes do not typically install central air conditioning in the absence of the RNC Demo.

In addition, there are several non-energy benefits associated with the RNC Demo that were not accounted for in the benefit-cost analysis in the Amended Plan. One important set of non-energy benefits includes those associated with low-income efficiency savings. The Compact has worked closely with Habitat for Humanity in 2003 to develop its support for and participation in the RNC Demo. The Compact believes that Habitat will continue to play a key role in any such program that the Compact offers in future years. Accordingly, the updated benefit-cost analysis assumes that one-half of the

housing units participating in the RNC Demo will be low-income housing units, and will experience the additional non-energy benefits associated with low-income efficiency savings.

Table 3.4 of the Amended Plan highlights environmental benefits of the RNC Demo that were not accounted for in the original benefit-cost analysis. This table is presented again as Table 2. See Exhibit 2 attached hereto. While these benefits are labeled “environmental” benefits (which the Department’s Guidelines do not allow in the benefit-cost analysis), many of them also represent “participant resource benefits,” and “participant non-resource benefits” (which the Department’s Guidelines do allow in the benefit-cost analysis). For example, the installation of an automatic, effective ventilation system (scorecard number 6.2.b) can improve indoor air quality, thereby improving the health and the quality of life for the participants. As another example, if the new home is located within one-quarter mile of a public transportation stop (scorecard number 1.1.a), then the homeowner can reduce the maintenance and fuel costs associated with driving a car.

As with the energy benefits discussed above, it is difficult to fully quantify the participant resource and non-resource benefits associated with the RNC Demo because participants often have a choice about which measures to adopt. However, several of these measures are required by the program. Size optimization (scorecard number 2.1.a), waste reduction (scorecard number 5.2.a), and ventilation systems (scorecard number 6.2.b) are all measures required for participation in the RNC Demo.

Of these three required measures, the Compact can confidently quantify some of the resource benefits associated with waste reduction. Accordingly, the updated benefit-

cost analysis assumes that homes participating in the RNC Demo will be able to reduce the tipping fees associated with solid waste disposal, as a result of the efficient separation of materials that are reusable or recyclable (scorecard number 5.2.a).

Finally, based on the experience with this program thus far in 2003, the Compact now has better estimates for the costs associated with the RNC Demo. It estimates that the incremental costs to the homeowners and builders of achieving the Tiers 1, 2 and 3 are close to the financial incentives provided for each tier. These costs are slightly lower than those assumed in the benefit-cost analysis of the Amended Plan, and thus serve to increase the adjusted BCR.

As a result of these four adjustments, the BCR for the RNC Demo is now estimated to be 0.75. This is considerably higher than the BCR of 0.55 that was estimated in the Compact's Amended Plan.

It has recently come to the attention of the Compact that Massachusetts utilities frequently include pilot programs in their energy efficiency plans without calculating an independent BCR. Instead, they include the costs of the pilot programs with the costs of other programs within the same sector. If the Compact were to adopt this approach, and to include the costs and benefits of the RNC Demo in with the costs and benefits of the RNC program, then the BCR for the latter program would be reduced from 1.43 to 1.21. From this perspective, the RNC Demo program is cost-effective.<sup>1</sup>

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<sup>1</sup> Although the Compact believes its approach of treating the RNC Demo on a stand-alone basis in this docket is appropriate, it could fold this into other programs and not calculate an independent BCR if necessary to obtain approval.

While this BCR is still less than 1.0, the Compact believes that the RNC Demo is appropriate and clearly in the public interest, for the following reasons, among others:

- ?? As a pilot program, the RNC Demo will provide invaluable lessons for how to improve the efficiency of new home construction, which is a critical lost opportunity market on Cape Cod and Martha's Vineyard;
- ?? As indicated in Table 1, this program will result in many energy savings that are not accounted for in the benefit-cost analysis;
- ?? As indicated in Table 2, there are many participant resource and non-resource benefits that are not accounted for in the benefit-cost analysis;
- ?? As indicated in Table 2, there are many environmental benefits that are not accounted for in the benefit-cost analysis; and
- ?? One of the goals of the RNC Demo is to help transform the market for new home construction on Cape Cod, Martha's Vineyard, and even elsewhere in the region. These spillover effects are not accounted for in the benefit-cost analysis.

Therefore, the small investment in the RNC Demo will provide invaluable lessons for improving the standard of the broader based-RNC program for Cape and Vineyard consumers and for other statewide program administrators in the future.

**V. CONCLUSION**

For the reasons stated herein, the Compact respectfully urges the Department to reconsider its rejection of the RNC Demo in the Amended Plan.

Respectfully submitted,

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Jeffrey M. Bernstein, BBO # 041190  
BERNSTEIN, CUSHNER & KIMMELL, P.C.  
585 Boylston Street, Suite 400  
Boston, MA 02116  
(617) 236-4090 (voice)  
(617) 236-4339 (facsimile)

On the motion,

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Tim Woolf  
SYNAPSE ENERGY ECONOMICS, INC.  
22 Pearl Street  
Cambridge, Massachusetts 02139  
(617) 661-3248 (voice)  
(617) 661-0599 (facsimile)

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